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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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0 1 2 3 4 5 6 7 8 9 10 11 12 HENSHAW

J FM-254839

INTELLECTUAL PROPERTY GROUP
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4M22/1219

EXAMINER

HARRISON, R

ART UNIT

PAPER NUMBER

1619

DATE MAILED:

12/19/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/393,261

Applicant(s)
Henshaw

Examiner
Robert H. Harrison

Group Art Unit
1619



☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 14-34 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 14-34 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☒ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 9 & 10

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in WIPO on March 21, 1997. It is noted, however, that applicant has not filed a certified copy of the International application as required by 35 U.S.C. 371. Is this the national stage of PCT/GB97/00800? If so, then applicant has improperly claimed benefit and improperly referred to the national stage of PCT/GB97/00800 in the application papers and on the first page of the specification. Correction is seen as necessary.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 14-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The expression "cellulosic material" is beyond this disclosure. What is this cellulosic material? Further specificity is seen as necessary. Isn't body fat the same or equivalent to adipose tissue? The expression, "DK 446, 401, 442, 512, etc. is improper since they are names that are not specifically corresponding to characterized structures. If they are names in trade, then they should be identified structurally with corroborative trade literature publicly available as of the effective filing date. Claim 26 is unduly vague since it is not clear what features are being claimed. Specifically, "material which is an agonist of cellulosic white core material..." cannot be

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understood. "White hard core material" is indefinite since it is not clear what structures are encompassed thereby. Clarification and/or correction is deemed necessary.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 14-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chuhran (U.S. Patent No. 6,136,340).

Chuhran (U.S. Patent No. 6,136,340) discloses rodenticidal bait formulations comprising an inherently rodenticidal carbohydrate such as corn cob, and customary baits such as molasses.

Chuhran (U.S. Patent No. 6,136,340) do not appear to disclose the symptoms, properties, and particular corn cob hybrids. It would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to select any corn cob including DK 446 since

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Chuhuran (U.S. Patent No. 6,136,340) discloses corn cob in general has the inherent rodenticidal property and since DK 446 was known as a corn material as of the effective filing date, selection of this particular hybrid would have involved merely following the direction of Chuhuran (U.S. Patent No. 6,136,340), absent a showing of unusual, surprising or unexpected results with specific corn hybrids.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert H. Harrison whose telephone number is (703) 308-2422. The examiner can normally be reached on Monday-Thursday from 7:30 a.m. to 6:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana L. Dudash, can be reached on (703) 308-2328

The fax phone number for most official papers or communications to Technology Center 1600/2900 - Group 1610 - Art Unit 1619 is (703) 308-4556 or (703) 308-4242 or (703) 305-1935. Such papers or communications must conform with the notice published in the Official Gazette, 1096 OG 30; November 15, 1989.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 1610 receptionist whose telephone number is (703) 308-1234.


Robert H. Harrison
Primary Examiner
Tech. Center 1600/2900
Group 1610
Art Unit 1619

RHHarrison/rhh
December 17, 2000